

reconsideration of the application in light of the following remarks are requested.

Originally filed claims 1 through 23 remain pending in this application. Claims 1, 3, 12, 19 and 22 are the independent claims. No claims have been cancelled or added. No claims have been allowed. All of the pending claims, 1 through 23, were rejected with claim 13 being rejected under 35 U.S.C. 112, claims 12 and 14 through 18 being rejected under 35 U.S.C. 102 and claims 1 through 11, 13, and 19 through 23 being rejected under 35 U.S.C. 103.

The Rejection of Claim 13 Under 35 U.S.C. 112

Claim 13 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. This rejection is respectfully traversed.

The Examiner indicates that the meaning of the phrase "said extracted database may be made available in the form of a report" is unclear in the context of the claim. The Examiner continues by indicating, more specifically, that it is unclear as to how a database can be made available in the form of a report. The phrase, however, is deemed to be very clear in that it simply recites that the extracted database (see claim 12) can be made available in the form

of a report. The Examiner has not explained what is unclear about this phrase.

To recite how the database may be made available in the form of a report would substantially narrow the claim. (In fact, the extracted database may be made available in the form of a downloadable, printable report.) Thus, it is believed that the Examiner is confusing lack of clarity with breadth. If the Examiner insists on maintaining this position, the lack of clarity of the phrase should be clearly explained.

This rejection is untenable and should be withdrawn.

The Rejection of Claims 12 and 14 through 18 Under 35

U.S.C. 102

Claims 12 and 14 through 18 were rejected under 35 U.S.C. 102(e) as being anticipated by Brynjestad. This rejection is respectfully traversed.

The Examiner, in essence, states that Brynjestad teaches a media-borne ergonomics resource system that is a knowledge-based expert system where the resources include at least one ergonomics program for a work-site of interest and which, in turn, includes at least one database. How the Examiner came to this conclusion is not understood. A

rejection under 35 U.S.C. 102 requires that every recited limitation be found in a single reference. Thus, a traversing response would often require an explanation, limitation by limitation, as to those limitations not taught by the applied reference. However, in this case, not only is the rejection flawed, but it violates the unambiguous meaning of the terms employed. Words do have meaning and the Examiner is not entitled to create new meanings for those words. Accordingly, it is believed that a discussion of each limitation is unnecessary.

The reference does teach a knowledge-based expert system with databases that are directly pertinent to the purpose of the system and those that are ancillary to that purpose. There are a plethora of such systems. This has nothing to do with the invention as disclosed or claimed.

The reference teaches a system for diagnosis and treatment of pain. In contradistinction thereto, the invention deals with ergonomics which involves the design of a workplace so as to avoid injuries and repetitive use disorders (which could result in pain). The invention does not in any way involve the treatment of pain.

The invention involves ergonomic resources which includes ergonomic programs for a worksite of interest and databases for a worksite of interest. The reference

teaches no ergonomic resources, no ergonomic programs, no databases related to a worksite of interest and, in fact, does not concern a worksite. The reference deals with a patient. This is deemed to be enough to show that the entire '102 rejection is inappropriate because all the rejected claims involve claim 12 and claims that are dependent thereon. Nevertheless, it may be worthwhile to discuss some of these dependent claims.

Claim 16, in essence, recites that while the system is an expert system, at least one program is useable by laymen in the field of ergonomics. The expert system refers to the level of (ergonomics) information that is embedded in the system and has nothing to do with the users. The reference is intended to be used by experts. The invention, as disclosed and claimed, is intended to be used by laymen.

More particularly, the reference establishes a pain treatment plan that must be fully formulated and monitored in conjunction with active input from an expert physician user. The reference does not teach a system to be used by laypersons to gather information and make recommendations. With the invention these would be ergonomic recommendations based upon ergonomic information. Unlike the reference,

the invention gathers no input from experts and is not implemented by experts.

The Examiner's comment relating to the term "government regulations" contained in claim 17 is erroneous but does contain a humorous aspect. The World Health Organization (WHO) may well issue regulations. However, at this time it is not believed that they (or the UN) have achieved the status of a government.

This rejection cannot be maintained.

The Rejection of Claims 1 through 11, 13, and 19 through 23

Under 35 U.S.C. 103

Claims 1 through 11, 13, and 19 through 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Byrnjestad (hereinafter referred to as the primary reference) in view of Mears et al. (hereinafter referred to as the secondary reference). This rejection is also respectfully traversed.

The Examiner recognizes that the primary reference discloses a PMA system but somehow equates a "knowledge based expert system" with "ergonomics resources," and an "ergonomics program" with a "PMA patient program." With all due respect this is totally without merit. It is suggested that it may be helpful for the Examiner to re-

read the application, the references, and perhaps consult a dictionary for a definition of ergonomics. The Examiner somehow finds that the secondary reference provides a report related to ergonomic resources. The secondary reference, like the primary reference, has nothing whatsoever to do with ergonomics.

The primary reference is discussed above in the response to the '102 rejection. The secondary reference is a rather generic information system that can be tailored to a particular client or organization's needs. Information can be exchanged between members of the organization. The client can request that certain information be added to the system. It is important to recognize that the system is to be used by experts in an area concerning a particular organization. The invention is used to make expert ergonomics information available to, and useful to, layman in the area of ergonomics. For instance, it could be useful to those working in various worksites like a lumber mill where no one is familiar with ergonomics.

Thus, in essence, the Examiner opines that the primary reference (having nothing to do with ergonomics) can be modified by the secondary reference (having nothing to do with ergonomics) to obviate claims which clearly relate to and are limited to ergonomics. This is clearly erroneous.

But there are a number of other issues that need be discussed.

For one thing, neither of the references are pertinent or analogous art. It is irrelevant that these references may be in the Examiner's field of search. To be pertinent or analogous, the references should be those that the inventor would consult to resolve the problem at hand. The problem at hand was to provide expert, useful ergonomics information to laymen at various worksites (and not to ergonomics experts). When references are not pertinent or analogous, they are not to be employed for any purpose in a rejection. (The distinctions between an expert system and a system that may be used by laymen are fully explored in the response to the '102 rejection on page 5 to the top of page 6.)

Referring once again to the combination of the references employed by the Examiner, the Examiner is not simply free to combine any references desired. A combination of references is only proper where there is a teaching or suggestion of the combination in the references themselves or at least a motivation for an artisan in the art to make the combination. No teaching or suggestion in the references of the combination is present and no motivation recognized under the patent laws can be found.

(It is suggested that the Examiner not find such a motivation by finding, in turn, that the teachings of the secondary reference would improve a device disclosed in the primary reference. This is an argument that can only be advanced through prohibited hindsight. If a motivation argument is advanced in the future, it would be greatly appreciated if the Examiner would include the basis of the argument by citing supporting case law or the like.) Thus, the combination is improper. It is axiomatic that if a combination is not proper, it is irrelevant what the combination would teach. This is not meant to imply that if the combination were proper, the combination would support a rejection of any of the claims. In fact, the proposed combination of references would not and could not form the basis of a viable rejection. The proposed combination involves one reference that has nothing to do with ergonomics combined with another reference that has nothing to do with ergonomics.

It may be worthwhile to remind the Examiner that obviousness is a conclusion that requires support. It is insufficient to state that one reference could be modified with another reference and then jump to a conclusion of obvious. Where did the idea for the combination come from (discussed above), where did the idea for the modification